

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

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May 4, 2004

**FROM:**       **GERRY NEWCOMBE**, Deputy Administrative Officer  
County Administrative Office

**RONALD D. REITZ**, County Counsel  
Department of County Counsel

**SUBJECT:   INDEMNIFICATION OF SAN BERNARDINO COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION ON CERTAIN ISSUES RELATED TO THE  
COUNTY'S POTENTIAL ISSUANCE OF ITS SERIES 2004 PENSION  
OBLIGATION BONDS**

**RECOMMENDATION:** Provide Indemnification to the San Bernardino County Employees' Retirement Association on the issues of: (1) setting the County employer contribution rates for Fiscal Year 2004-05 based upon a new actuarial valuation reflecting approximately \$476.9 million in contributions in June 2004; and (2) the "re-smoothing" of market gains and losses to provide the County with a more consistent, even pattern of recognition of gains and losses in the valuation of the County's unfunded accrued actuarial liability.

**BACKGROUND INFORMATION:** As of June 30, 2003, based on a report of the actuarial valuation of the retirement system performed for the County Employees' Retirement Association ("Board of Retirement"), the County had an unfunded accrued actuarial liability ("UAAL") to the Board of Retirement in the amount of \$476,912,000. County staff has been working with a finance team to analyze ways to deal with this UAAL. A recommendation will be brought to the Board of Supervisors on May 11 to issue pension obligation bonds in an amount not to exceed \$485 million (consisting of the UAAL and costs of issuance).

The Board of Retirement, in accordance with the provisions of Government Code section 31453, is prepared to recommend to the Board of Supervisors changes in the rates of contributions to fund the retirement system on a sound actuarial basis. The initial recommendation was prepared in advance of County staff decision to recommend the issuance of pension obligation bonds in June of this year. As a result, the Board of Retirement's initial recommendation did not take into consideration the approximately \$476,912,000 in contributions to the retirement system, thereby "wiping out" the County's UAAL for the June 30, 2003 valuation. If that contribution is not taken into account and the Board of Retirement's initial recommendation does not reflect that contribution, the effect would be that the County pays twice in Fiscal Year 2004-05 for that UAAL. The County's contribution rates would not be adjusted until Fiscal Year 2005-06 to reflect the use of the proceeds of the pension obligation bonds. Due to the expected budget impacts from State funding cuts in Fiscal Year 2004-05 and the fact that debt service begins on the pension obligation bonds immediately in Fiscal Year 2004-05, the County is requesting that the entire \$476,912,000 contribution be taken into account and that the County's employer contribution rates for Fiscal Year 2004-05, be reduced.

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	Record of Action of the Board of Supervisors
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**BOARD OF SUPERVISORS  
INDEMNIFICATION OF SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT  
ASSOCIATION ON CERTAIN ISSUES RELATED TO THE COUNTY'S POTENTIAL ISSUANCE  
OF ITS SERIES 2004 PENSION OBLIGATION BONDS**

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The Board of Retirement has agreed to reflect the proceeds of the pension obligation bonds in a reduced County employer contribution rate in exchange for the County's agreement to indemnify and defend the Board of Retirement in the event of any claims or actions arising out of the reduced contributions rate. There has been recent litigation in the San Diego County Superior Court involving the county of San Diego and its Retirement Association, on the issue of a reduced employer contribution rate that reflects the issuance of pension obligation bonds. The tentative decision is in the County and Retirement Board's favor. It is possible that a decision could be appealed and a court of appeal could potentially rule against San Diego County and its Retirement Board. In light of potential litigation, the San Bernardino Board of Retirement has requested that it be indemnified and held harmless in the event any litigation arises out of its recommendation to reduce the County employer contribution rates to reflect the issuance of the pension obligation bonds.

As part of the overall process of evaluating the effect of the contribution of the pension obligation bond proceeds in reducing the County's UAAL, County staff requested the Board of Retirement's actuary to review the "smoothing" process of the recognition of gains and losses to provide the County with a more consistent, even pattern of recognition of gains and losses in the valuation of the UAAL. The actuary has recommended a "re-smoothing" process that would provide a more even pattern of recognition of the market gains and losses. This new pattern should allow the County more certainty when budgeting payments to the Board of Retirement in the next several years. Once again, in exchange for adoption of the recommendation to allow a new "re-smoothing" pattern, the Board of Retirement has asked for an indemnification in the event of any claims or actions on that issue.

County Counsel and the Administrative Office have reviewed the request for the indemnification on the two issues described above. Based upon an analysis of the risk of potential claims or actions on the two issues, the existing status of the law, and the benefits to be derived from the requested actions of the Retirement Board, it is recommended that the Board of Supervisors provide the following indemnification to the Board of Retirement:

"To the extent authorized by law, the County agrees to indemnify, defend and hold harmless the San Bernardino County Employees' Retirement Association ("Board of Retirement") and its trustees, authorized officers, employees and agents from any and all claims or actions arising out of the County's request of the Board of Retirement to set the County employer contribution rates for Fiscal Year 2004-05 based upon a new actuarial valuation reflecting approximately \$476,912,000 in contributions in June 2004. This indemnification also extends to the County's request of the Board of Retirement to "re-smooth" market gains and losses to provide the County with a more consistent, even pattern of recognition of gains and losses in the valuation of the County's UAAL (unfunded accrued actuarial liability)."

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**REVIEW AND APPROVAL BY OTHERS:** This item has been reviewed County Counsel (Michelle D. Blakemore, Deputy County Counsel, 387-5445) on April 24, 2004; the County Administrative Office (Gerry Newcombe, Deputy Administrative Officer, 387-5424) on April 26, 2004; the County Administrative Office (Daniel Kopp, Administrative Analyst, 387-3828) on April 26, 2004.

**FINANCIAL IMPACT:** There is no immediate financial impact from issuing the indemnification described above but any actual costs would be the responsibility of the General Fund. Potential future costs of the County Counsel relative to defending actions that could be brought against the Board of Retirement are unknown and impossible to quantify at this time.

**SUPERVISORIAL DISTRICT(S):** All

**PRESENTER:** Gerry Newcombe, Deputy Administrative Officer, 387-5424; Ronald D. Reitz, County Counsel, 387-5459.

MDB:bj

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